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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,322	01/10/2002	David Bruce Kumhyr	AUS9-2001-0974-US1	1238

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EXAMINER

LEZAK, ARRIENNE M

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/045,322

Applicant(s)

KUMHYR ET AL.

Examiner

Arrienne M. Lezak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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### **DETAILED ACTION**

Examiner notes that Claims 1, 2, 4, 7, 9-11, 13, 16, 18-20, 22, 25, 27 & 28 have been amended, and no claims have been added or canceled. Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 3 June 2005 as reiterated herein below.

#### ***Claim Rejections - 35 USC § 112***

Claims 1, 10 & 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, Examiner finds the wording “an undesired user association between the advertiser and page content is avoided” to lack support in the specification, as Examiner notes that the word “undesired” is not synonymous with the word “inappropriate”. For purposes of examination, the amended portion of the claim language noted above shall not be considered.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over extensive consideration of US Patent US 6,804,659 B1 to Graham.

3. Regarding Claims 1, 2, 4, 6-11, 13, 15-20, 22 & 24-28, Graham discloses an Internet target marketing system, method and computer program, (Abstract & Cols. 17-20) comprising:

- watching a datastream representing a page for delivery to a client via a network, (Col. 1, lines 51-67; Col. 2; Col. 3, lines 1-47; & Col. 4, lines Col. 4, lines 42-63) ;
- determining if an advertisement subject to display restrictions is identified in said datastream, (Col. 8, lines 14-67; Cols. 9 & 10 – particularly Col. 10, lines 32-44), (Examiner notes that Graham teaches display restriction; however Graham does not specifically mention use of the same for restricting subjectively “inappropriate” material from being displayed. Examiner finds that as Graham teaches the generation of a “contextually sensitive advertisement”, (Abstract), the same would obviously be based on user interest, as noted by user, and wherein a user could obviously indicate that subject matter which they found inappropriate to display, (i.e.; on a family computer used by minor children));
- determining if said advertisement is displayed in said page in response to a predetermined set of key items, (Col. 6, lines 7-47; Col. 7, lines 46-67; Col. 8, lines 61-67; & Col. 9, lines 1-4), wherein said step of determining if said advertisement is displayed includes the steps of:

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- determining a number of matched key items in content of said page, (per pending Claims 4, 13, 22 & 28), (Col. 7, lines 46-67 & Cols. 8-10); and
- determining if said number of matched key items is less than a predetermined lower threshold, (per pending Claims 4, 13, 22 & 28), (Col. 7, lines 46-67 & Cols. 8-10 – particularly, Col. 10, lines 32-44), (Examiner notes that Graham specifically teaches a threshold comparison and display limitation, wherein any determination based on the same would have been obvious as a means by which content is chosen for display);
- if said number of matched key items is not less than said predetermined lower threshold, determining if said number of matched key items is not less than a predetermined upper threshold, and wherein said advertisement does not display if said number of matched key items is not less than said predetermined upper threshold, (per pending Claims 6, 15, 24 & 28), (per pending Claims 4, 13, 22 & 28), (Col. 7, lines 46-67 & Cols. 8-10 – particularly, Col. 10, lines 32-44), (Examiner notes that Graham specifically teaches a threshold comparison and display limitation, wherein any determination based on the same would have been obvious as a means by which content is chosen for display);
- content analysis of said datastream comprising a semantic parsing of said datastream, (per pending Claims 9, 18, 27 & 28), (Col. 11, lines 7-11); and
- tallying fulfillment data if said advertisement does not display, (per pending Claims 8, 17, 26 & 28), (Col. 5, lines 30-39 & Col. 6, lines 4-6).

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4. Though Graham clearly teaches semantic/key word analysis of data for transmission/display of data, (Col. 2, lines 5-63 & Col. 7, lines 46-67), the same process could obviously be used for the non-transmission/display (or restriction) of data, especially in light of the fact that data not noted by designated key words is obviously not sent, (per pending Claims 2, 11, 20 & 28 - determining if the advertisement associated with the page is restricted from being displayed in the page in response to a content analysis of the data stream, wherein the content analysis comprises the steps of: matching against a predetermined set of key items; determining if a matched key item is a prohibited item, wherein the advertisement is not displayed if the matched key item is a prohibited item; and if the matched key item is not a prohibited item, determining if the advertisement is displayed). Examiner further notes that the concept of semantic data transmission threshold restriction was well known in the art and additionally provides the Kirsh reference that teaches transmission restriction of undesired email, (Claims 1-3; Col. 1, lines 6-13; Col. 2, lines 60-67; Col. 3; & Col. 4, lines 1-33), through the use of predefined key word analysis, (Col. 11 – Table IV), and a threshold comparison, (Col. 12, lines 5-13; Col. 13, lines 15-41; & Col. 16, lines 42-55), wherein it would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to apply the semantic key word analysis technique for restricting transmission to the Graham semantic key word analysis system as noted within Kirsch, which indicates that the teachings could be applied to include other undesired message types, (i.e.: web page data), via use of a server or proxy placed in the transport path, (Kirsch – Col. 18, lines 32-37).

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5. Graham discloses an Internet target marketing system wherein said lower threshold does not equal said upper threshold, the method further comprising the step of, if said number of matched key items is greater than said predetermined lower threshold and less than said predetermined upper threshold, launching an exception process, wherein said exception process for determining if said advertisement is displayed in accordance with a permission received from a sponsor of said advertisement, (per pending Claims 7, 16, 25 & 28), (Col. 7, lines 46-67 & Cols. 8-10 – particularly, Col. 10, lines 32-44), (Examiner notes that Graham specifically teaches a threshold comparison and display limitation, wherein any determination based on the same would have been obvious as a means by which content is chosen for display. Additionally, Examiner notes that Graham discloses an **aj** value, which value may be used to “break a tie”, in the event of same advertisement **Rj** values, and which **aj** value represents the advertising concept with the higher score. Examiner finds that in allowing for such an advertiser-related additional determination, Graham obviously teaches Applicant’s “exception process” as the **aj** score could obviously and clearly reflect sponsor choice). Additionally, as noted above, Kirsch also teaches a threshold comparison means.

6. Though Graham teaches an exception sub process, Graham does not specifically enumerate the sending of a display permission request to the sponsor, inclusive of the matched key items and semantic analysis; the transmission of a copy of the page upon request; and the display of the page upon receipt of authorization. McClain teaches a system for the filtering of web-based content, (abstract), wherein a

permission request is sent to the filter for analysis against preset user policies, which policies are determinative of user access to and display of the data, (Claims 1-8 & Col. 6, lines 19-45), (Examiner notes that it would be obvious for the permission request to identify any and all data in question for purposes of proper analysis against preset policies as needed). Additionally, Examiner notes that McCain further teaches a means by which a user may be warned as to the transmission of questionable content, (Col. 14, lines 27-30), which warning provides for the transmission of a copy upon user request. It would have been obvious to incorporate the McCain permission request process into the Graham Internet advertising system for purposes of restricting access to certain types of information on the Internet and other networks by selected users, (McCain – Col. 1, lines 17-24). Further, Examiner finds that the application of a policy identifying contextually negative data as a result of semantic analysis, (per pending Claims 9, 18, 27 & 28), would have been obvious in light of Graham and McCain, as noted herein. Thus, Claims 1, 2, 4, 6-11, 13, 15-20, 22 & 24-28 are found to be unpatentable over the combined teachings of Graham, Kirsch and McCain.

7. Regarding Claims 3, 12 & 21, Graham, Kirsch and McCain are relied upon for those teachings noted herein. Graham further discloses determining if said advertisement is displayed comprises the step of scanning said page for instances of said key items, (Col. 2, lines 5-63 & Col. 7, lines 46-67). Thus, Claims 3, 12 & 21 are found to be unpatentable over the combined teachings of Graham, Kirsch and McCain.

8. Regarding Claims 5, 14 & 23, Graham, Kirsch and McCain are relied upon for those teachings noted herein. Graham further discloses an Internet target marketing



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system wherein said advertisement is displayed if said number of matched key items is less than said predetermined lower threshold, (Col. 7, lines 46-67 & Cols. 8-10 – particularly, Col. 10, lines 32-44), (Examiner notes that Graham specifically teaches a threshold comparison and display limitation, wherein any determination based on the same would have been obvious as a means by which content is chosen for display). Thus, Claims 5, 14 & 23 are found to be unpatentable over the combined teachings of Graham, Kirsch and McCain.

### ***Response to Arguments***

9. Applicant's arguments filed 2 June 2005, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made.

10. Regarding Applicant's comment that the Examiner indicated the amendment would overcome the Graham reference, Examiner respectfully disagrees noting the Interview Summary dated 3 June 2005 composed immediately following interview with Applicant.

11. Regarding Applicant's argument that Graham does not teach datastream monitoring, Examiner respectfully disagrees noting that the marketing system taught within Graham clearly and obviously teaches a data monitoring and selection process as noted herein. Additionally, Applicant's arguments concerning the restriction of data was addressed in the prior office action dated 25 March 2005 as well as herein above.

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In response to applicant's argument that Graham teaches target advertising as opposed to restriction of advertising, Examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Specifically, Examiner finds that the Graham system obviously restricts advertising in that ads devoid of key words would not be sent to the user. Regardless, Examiner has further provided two other references, (Kirsch and McCain), which teach data restriction means easily incorporated into the Graham system as noted herein.

12. Examiner has addressed Applicant's Amendment, and has further rejected all claims, as noted herein above. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
Examiner  
Art Unit 2143d

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